

**Federal Defenders
OF NEW YORK, INC.**

Southern District
52 Duane Street-10th Floor, New York, NY 10007
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton
Executive Director

Southern District of New York
Jennifer L. Brown
Attorney-in-Charge

April 3, 2018

By ECF

Honorable Lewis A. Kaplan
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

**Re: United States v. David Blaszczyk,
17 Cr. 357 (LAK)**

Dear Judge Kaplan:

We write in advance of the anticipated testimony of government witness Carmen Taveras to state our objection to the admission of Government Exhibit 3000 (“GX 3000”). This exhibit purports to display trading profits realized by Deerfield and Visium funds. In addition to being irrelevant, the calculation of profits on these charts is materially misleading because it assumes, counterfactually, that Deerfield and Visium liquidated their positions in the relevant securities on the trading day following each CMS announcement. Because those imagined sales did not in fact occur, the actual profits and losses ultimately realized by Deerfield and Visium were materially different than those reflected in government’s charts. In the case of Visium, GX 3000 shows total profit of \$330,598, while Visium in fact realized a total *loss* of \$682,130. The difference is more than \$1 million.

Honorable Lewis A. Kaplan
United States District Judge

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Because the government has refused to correct GX 3000, we ask the Court to exclude it. “Courts have long required that summary charts fairly represent and summarize the evidence upon which they are based.” United States v. Citron, 783 F.2d 307, 316 (2d Cir. 1986) (noting that reliance on cross-examination is insufficient to protect the defendant against a misleading summary chart). “Unless this requirement is met, the chart is more likely to confuse or mislead the jury than it is to assist it.” Id. (citing Fed. R. Evid. 403). See also United States v. Conlin, 551 F.2d 534, 539 (2d Cir. 1977) (“A chart which for any reason presents an unfair picture can be a potent weapon for harm, and permitting the jury to consider it is error.”).

Respectfully submitted,

/s/

David E. Patton
Sabrina P. Shroff
Clay H. Kaminsky
Danielle E. Thorne

Counsel for David Blaszczyk

CC: Counsel of record